

Exempt Organization incurs Retailers' Occupation Tax liability upon delivery and transfer of building materials when collecting a percentage of the actual retail value of materials delivered in order to recoup operating costs. See 86 Ill. Adm. Code 130.2005 (This is a PLR.)

November 3, 2004

Dear Xxxxx:

This letter is in response to your letter dated January 28, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to ABC for the issue or issues presented in this ruling, and are subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither ABC nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

I respectfully request that the Illinois Department of Revenue rule that the transfer of tangible personal property under the facts and circumstances defined below, is not subject to Illinois Retailers Occupation Tax or Illinois Use Tax.

#### STATEMENT OF RELEVANT FACTS

ABC is a subordinate organization to XYZ which is an organization exempt under Section 501(c)(3) of the Internal Revenue Code. As a subordinate organization, ABC is also exempt under Section 501(c)(3) of the Internal Revenue Code. (See attached letter from the Internal Revenue Service.)

One of ABC's charitable missions is to improve housing for low income families by distributing building and home improvement materials and supplies to needy families. ABC receives significant donations of building materials, supplies, home improvement

and maintenance items such as paint, lumber, ladders, nails, plumbing supplies, electrical supplies, tools, etc. ('building materials') which ABC distributes in kind through outlets called OUTLET.

The CITY OUTLET and the other ten OUTLETS in other states, operate as follows:

1. The majority of building materials that CITY OUTLET receives are donated in-kind by donees pursuant to Section 170(e)(3) of the Internal Revenue Code. When donations of certain items which CITY OUTLET considers as 'essentials' are not available through donations, CITY OUTLET purchases them through companies that normally supply those types of items.
2. The building materials are redistributed to 'persons in need' who are sponsored by Churches and not-for-profit organizations who are members of the CITY OUTLET. There are no sales to third parties nor does the CITY OUTLET advertise or promote its activities except through not-for-profit channels
3. Each OUTLET is operated on a not-for-profit basis, and attempts to recover its cost of operation through the handling fees collected.
4. Each OUTLET charges 'persons in need' a handling fee which approximates 10% to 15% of the retail value of the building materials being distributed. While the handling fee does offset some of the OUTLET's operating costs, more importantly, it is ABC's experience that the needy are more appreciative and retain more of their dignity and self respect when the needy pay at least a nominal amount towards the items they receive.

#### **RULING REQUESTED**

ABC hereby requests a ruling by the Illinois Department of Revenue that:

- A. The transfer or distribution of personal property from ABC, to needy individuals in accordance with the facts outlined above, is not a sale at retail as defined by 35 ILCS 120/1 or
- B. That the 10% to 15% handling fee paid by the needy individuals to the CITY OUTLET is a service charge or handling fee incidental to the charitable donation, and is not paid in exchange for the personal property received.

If you need additional information or require clarification of the facts contained herein, please contact me directly.

#### **DEPARTMENT'S RESPONSE**

The Illinois Retailers' Occupation Tax is imposed upon the total gross receipts received by retailers who make sales of tangible personal property to Illinois end users. Unless the sales are specifically exempted, such retailers must collect and remit the sales tax. See 86 Ill. Adm. Code 130.101.

Organizations making application to the Illinois Department of Revenue and determined to be exclusively religious, educational, or charitable, receive an exemption identification number (an "E"

number). This number evidences that the Department recognizes the organization as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purpose. If an organization does not have an “E” number, then its purchases are subject to tax. Only sales to organizations holding the “E” number are exempt, not sales to individual members of such organizations. Please refer to 86 Ill. Adm. Code 130.2007 for guidance on application for an “E” number.

Organizations that have an “E” number are also allowed to engage in a very limited amount of retail selling without incurring Retailers’ Occupation Tax liability. These limited amounts of selling are described in 86 Ill. Adm. Code 130.2005(a)(1)(E) and 130.2005(a)(2) through 130.2005(a)(4). An exempt organization may engage in sales to members, noncompetitive sales, and certain occasional dinners and similar activities (two fundraisers a year) without incurring Retailers’ Occupation Tax liability. Organizations can use their “E” numbers to purchase items for such limited exempt sales.

However, if an exempt organization is engaged in ongoing selling activities (for example, sales of items in a thrift shop run by a church), then the organization must register with the Department as a retailer, file returns and remit sales tax on such sales. For these types of ongoing sales, the organization would provide their supplier with a Certificate of Resale for the items they purchase to resell in order to avoid paying the Use Tax, and then remit Retailers’ Occupation tax on the gross receipts from the sales. See 86 Ill. Adm. Code 130.1405 describing the requirements for executing Certificates of Resale.

As the Department understands your letter, “handling fees” represents 10% to 15% of the retail value of the building materials being distributed to offset some of CITY OUTLET’s operating costs.

It does not appear that the sales and delivery of building materials, termed “handling fees” would be exempt from Retailers’ Occupation Tax liability under the three limited exceptions to taxable sales allowed to exempt organizations. The limited exceptions available to not-for-profit organizations described in 86 Ill. Adm. Code 130.2005 include:

1. Sales to the organization’s members – Sales by such an organization are not taxable if they are made to the organization’s members. Retailers’ Occupation Tax liability would be incurred upon retail sale to the public.
2. Noncompetitive sales – In order to qualify as a noncompetitive sale, the test is that such sale must be conducted by the members of the charitable entity, all proceeds must go to charity, the transaction must not be a continuing one but rather should be held either annually or a reasonably small number of times with a year. The reasonably ascertainable dominant motive of most transferees of the items sold must be the making of a charitable contribution, with the transfer of property being merely incidental and secondary to the dominant purpose of making a gift to the charity and occasional dinners and similar activities.
3. Occasional sales means not more than two times per calendar year.

The sales, as indicated by the facts submitted, are part of ongoing selling activities conducted by CITY OUTLET, and do not fall under the three very limited exceptions stated above.

The transfer or distribution of tangible personal property from CITY OUTLET, to individuals is a sale at retail. CITY OUTLET, would incur Retailers’ Occupation Tax on the gross receipts collected from the individual user. CITY OUTLET’s gross receipts are the “handling fees” it receives. It is the Department’s position that the substance of these transactions is the delivery of building materials.

The monies collected from the individual user (10% to 15% of retail value) is paid in exchange for the personal property received, and is subject to the Retailers' Occupation Tax liability.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter ruling, you may contact me at 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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